IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Shivlal.
vs.
Sukhdev Singh.

S.B.CIVIL SECOND APPEAL NO.438/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 24.7.2006 PASSED BY SHRI O.P. SINGH, ADDITIONAL DISTRICT JUDGE, BALI CAMP SUMERUR IN CIVIL APPEAL NO.23/2001.

DATE OF JUDGMENT ::: 3.1.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. LR Choudhary, for the appellant.
Mr. S Srimali a/w Mr.R Parihar, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant/defendant is aggrieved against the findings of fact recorded by two courts below in the

judgments dated 24.9.2001 and 24.7.2006 passed by the trial court and first appellate court respectively.

Brief facts of the case are that the plaintiff/ respondent filed suit for injunction against the defendant/appellant alleging that the appellant encroached upon the land of lane measuring 2.9 feet to 1.9 feet x 18 feet of public way and raised a platform and latrine over the said encroached land causing nuisance for the plaintiff.

Two courts below concurrently held that the land in dispute is land of public way and the appellant failed to prove the constructed platform and latrine within his pattasud land despite the fact that the appellant's positive case was that the construction which he raised in recent past was within the pattsud area of the house of the appellant.

It appears from the facts of the case that two courts below considered the facts of the case in the light of oral as well as documentary evidence and thereafter reached to the conclusion that the defendant failed to prove his title over the suit property and the plaintiff proved the land as of way. I do not find any illegality in the impugned judgments.

In view of the above, no substantial question of law is involved in this appeal. Accordingly, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya